

Opinion No. 43-4218

January 28, 1943

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Arthur Livingston, Assistant District Attorney, Santa Fe, New Mexico

We are in receipt of your letter of January 21, 1943, in which you ask whether or not a Tax Sale Certificate should be written on property assessed in the name of, or belonging to men in the service of the United States, in the light of Sections 500 (1) and 500 (2) of the Soldiers and Sailors Civil Relief Act, as amended in 1942. These provisions relating to taxes are as follows:

"(1) The provisions of this section shall apply when any taxes or assessments, whether general or special (other than taxes on income), whether falling due prior to or during the period of military service, in respect of personal property, money, or credits, or real property owned and occupied for dwelling, professional, business, or agricultural purposes by a person in military service or his dependents at the commencement of his period of military service and still so occupied by his dependents or employees are not paid.

"(2) No sale of such property shall be made to enforce the collection of such tax or assessment, or any proceeding or action for such purpose commenced, except upon leave of court granted upon application made therefor by the collector of taxes or other officer whose duty it is to enforce the collection of taxes or assessments. The court thereupon, unless in its opinion the ability of the person in military service to pay such taxes or assessments is not materially affected by reason of such service, may stay such proceedings or such sale, as provided in this Act, for a period extending not more than six months after the termination of the period of military service of such person."

It will be noticed that this Act prohibits the sale of property to collect a tax or assessment whether falling due prior to or during the period of military service, with respect to personal property, and certain real property owned by persons in military service or his dependents.

It will be noted, however, that this protection does not extend to all real estate owned by persons in military service or their dependents, but is limited to property occupied for dwelling, professional, business, or agricultural purposes by such person in military service or his dependents at the time of the commencement of his period of military service and still so occupied by his dependents or employees.

It is, therefore, my opinion that the County Treasurer should not sell real estate owned by persons in military service, or issue Tax Sale Certificates thereon when the conditions set forth above exist. It will, of course, be impossible for various County

Treasurers to determine just what persons are in military service, but insofar as they are able, it appears to me that they should adopt this practice.

As these sections refer to persons in military service, I am setting out Section 101 (1) of this Act defining what is meant by the term "persons in military service."

"(1) The term 'persons in military service' and the term 'persons in the military service of the United States,' as used in this Act, shall include the following persons and no others: All members of the Army of the United States, the United States Navy, the Marine Corps, the Coast Guard, and all officers of the Public Health Service detailed by proper authority for duty either with the Army or the Navy. The term 'military service,' as used in this Act, shall signify Federal service on active duty with any branch of service heretofore referred to or mentioned as well as training or education under the supervision of the United States preliminary to induction into the military service. The terms 'active service' or 'active duty' shall include the period during which a person in military service is absent from duty on account of sickness, wounds, leave, or other lawful cause."

You also ask whether or not the Federal Statute might be unavailing in an attempt to prevent the collection of state taxes. I have examined the cases and do not find that this question has even been decided by any of the courts in the United States. However, it is noted that by the sections above quoted, the person in military service is not relieved from taxation, but is only protected from the sale of his property for delinquent taxes during the time he is in service. It therefore appears to me that Congress has acted within the war powers granted to it, since this Act tends to promote the war effort by helping to improve the morale of the military forces in the United States, and that this Act would be upheld by the Supreme Court of the United States.

Trusting that the foregoing sufficiently answers your inquiry, I am

By ROBERT W. WARD,

Asst. Atty. General